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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,951	01/31/2001	Shvat Shaked	TRIV3	1478
6980	7590	12/24/2008		
TROUTMAN SANDERS LLP			EXAMINER	
600 PEACHTREE STREET , NE			HAVAN, THU THAO	
ATLANTA, GA 30308				
			ART UNIT	PAPER NUMBER
				3695
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			12/24/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/772,951	SHAKED ET AL.
	Examiner THU-THAO HAVAN	Art Unit 3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

1) Responsive to communication(s) filed on 10 October 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 21-34 is/are pending in the application.

4a) Of the above claim(s)       is/are withdrawn from consideration.

5) Claim(s)       is/are allowed.

6) Claim(s) 21-34 is/are rejected.

7) Claim(s)       is/are objected to.

8) Claim(s)       are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No.      .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date      

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date      

5) Notice of Informal Patent Application  
 6) Other:

**Detailed Action**

***Response to Amendment***

Claims 21-34 are pending. This action is in response to the amendment received October 10, 2008.

***Response to Arguments***

Applicant's arguments with respect to claims 21-34 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21-34 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth below:

In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-

statutory subject matter. With respect to all the independent claims, the claim language does not include the required tie or transformation and thus is directed to nonstatutory subject matter. For example, independent claim 21 only comprising of steps for data manipulation.

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be preformed without the use of a particular apparatus. Thus, claims 21-34 are non-statutory since they may be performed within the human mind.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The examiner can normally be reached on Monday-Friday from 6am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on (571) 272-6746. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Thu Thao Havan/  
Primary Examiner, Art Unit 3695

<b>Application Number</b> 	Application/Control No.	Applicant(s)/Patent under Reexamination
	09/772,951	SHAKED ET AL.
	<b>Examiner</b> THU-THAO HAVAN	<b>Art Unit</b> 3695